Claims 1 and 20, the only independent claims of the present application, are reproduced herebelow (with emphasis added):

> 1. A hair holding device comprising:
>
> a first body member and a second body member, said first and second body members comprising hair gripping portions;
>
> hinge means for pivotally connecting said first and second body members; and
>
> elastomeric means in contact with said first and second body members for biasing said first and second body members into a closed position and for conforming to gathered strands of a user's hair when said hair gripping portions come into contact with gathered strands of a user's hair.

> 20. A method of improving the hair holding capability of a hair holding device, said method comprising the steps of:
>
> selecting a hair holding device comprising first and second pivotally connected body members, said first and second body members comprising hair gripping portions; and
>
> providing said first and second body members with elastomeric means for biasing said first and second body members into a closed position and for conforming to gathered strands of a user's hair when said hair gripping portions come into contact with gathered strands of a user's hair.

Applicant's claimed elastomeric means performs two functions: (1) biasing the first and second members of the hair holding device into a closed position, and (2) conforming to gathered strands of a user's hair when the hair gripping portions of the first and second members come into contact with gathered strands of a user's hair. Neither of these functions is performed by the elastomeric means 8 of Lee. More specifically, the elastomeric means 8 taught by Lee is simply a serpentine

flexible member intended to cover torsion spring 4 for improved aesthetics. In the Lee device it is the torsion spring 4 not the flexible member 8 which biases the first and second members of the hair holding device into a closed position. And, being disposed opposite the hair gripping portions of the first and second members 1 and 2, the flexible member 8 does not and cannot contact the user's hair, let alone conform to gathered strands of a user's hair when the hair gripping portions of the first and second members come into contact with gathered strands of a user's hair. See Lee at col. 1, lines 4-6; col. 2, lines 7-10; col. 2, lines 27-31; and col. 2, lines 48-51, as well as FIGS. 4-8. Lee, therefore, does not anticipate or render obvious the invention defined in claims 1 and 20. Consequently, the outstanding Section 102(b) rejection of claims 1 and 12-20 in reliance upon Lee is believed to be improper, and withdrawal of such rejection is respectfully requested.

Claims 2-5 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lee. Such rejection is respectfully traversed.

As noted above, the flexible member 8 of Lee fails to perform both of the functions performed by Applicant's claimed elastomeric means as set forth in independent claim 1. As a matter of law claims 2-5 and 11, which are directly or indirectly dependent on claim 1, incorporate all of the features of the hair holding device of claim 1 -- including its unique elastomeric means. Since the flexible member 8 of Lee performs neither of the functions of Applicant's elastomeric means, it cannot be fairly said that Lee discloses, suggests or otherwise renders obvious the invention set forth in Applicant's claims 2-5 and 11. Accordingly, withdrawal of the outstanding Section

103(a) rejection of claims 2-5 and 11 in reliance upon Lee is respectfully requested.

Claims 1, 6-7 and 9-10 stand rejected under 35 U.S.C. §102(e) as being anticipated by Silva (U.S. Patent No. 6,453,911, "Silva"). Such rejection is respectfully traversed.

> With regard to claims 1, 6-7 and 9-10, Silva discloses a hair holding device (figs. 1 and 5) comprising a first body member (15a) and a second body member (16a) comprising hair gripping portions (15b, 16b), a hinge means (20) pivotally connecting the first and second body members and elastomeric means (12) in contact with the first and second body members for conforming to gathered strands of user's hair. The elastomeric means having at least one continuous elastomeric band (1, fig. 5) which comprises means for permanently connecting the band to first and second body members. The elastomeric band being a looped configuration (fig. 5), a laced configuration (fig. 1).

Applicant respectfully disagrees with the Examiner's interpretation of the Silva patent. Simple visual inspection of Silva reveals that the device disclosed therein is a pair of conventional hair clips 10 and 11 joined by a rope-like resilient band 12. The resilient band 12 is wrapped around a user's hair and the clips 10 and 11 hold the device in a desired arrangement. Quite unlike the elastomeric means of Applicant's claimed hair holding device, the resilient band 12 taught by Silva does not bias the first and second body members of either clip 10 or 11 into a closed position. That function is performed by a conventional torsion spring 19. Thus, Silva does not anticipate nor render obvious Applicant's hair holding device as prescribed in independent claim 1 and dependent claims 6, 7, 9 and 10. Accordingly, withdrawal of the outstanding Section 103(a)

rejection of claims 1, 6, 7, 9 and 10 in reliance upon Silva is respectfully requested.

In view of the foregoing, the instant application is believed to be in condition for allowance and, therefore, early issuance thereof is earnestly solicited.

If the Examiner believes that a telephone interview would be beneficial to advance prosecution of the present application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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